

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

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4 TARIQ AHMAD,

Case No. 3:20-CV-00717-MMD-CLB

5 v.

Plaintiff,

REPORT AND RECOMMENDATION OF
U.S. MAGISTRATE JUDGE¹

6 JIM FULKERSON, et al.,

[ECF Nos. 31, 39, 46, 48, 50, 54, 64, 66]

7 Defendants.

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9 Pending before the Court is Defendant Jim Fulkerson's ("Fulkerson") motion to
10 dismiss. (ECF No. 31.) In response, Plaintiff Tariq Ahmad ("Ahmad") filed a motion to
11 amend his first amended complaint, (ECF No. 39), to which Fulkerson responded, (ECF
12 No. 40), and Ahmad replied, (ECF No. 41). For the reasons discussed below, the Court
13 recommends Fulkerson's motion to dismiss, (ECF No. 31), be granted, Ahmad's motion
14 to amend, (ECF No. 39), be denied, and all other, pending motions, (ECF Nos. 46, 48,
15 50, 54, 64, 66), be denied, as moot.

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17 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

18 On December 28, 2020, Ahmad, acting *pro se*, filed his complaint in this matter.
19 (ECF No. 1). Ahmad alleges Graco bribed Jim Fulkerson ("Fulkerson"), a former Graco
20 employee, to persuade Fulkerson to change his testimony regarding contract work
21 Graco did for Pacific Energy & Mining Co, a company for which Ahmad was president.
(*Id.*) Ahmad's complaint raised two specific causes of action against Graco: fraud and
22 commercial bribery. (*Id.*) On February 8, 2021, Ahmad filed a first amended complaint
23 ("FAC"), changing the named defendant from Graco to Fulkerson, and alleging
24 conspiracy to commit fraud, fraud, and commercial bribery. (ECF No. 22.) On May 7,
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27 ¹ This Report and Recommendation is made to the Honorable Miranda M. Du,
28 United States District Judge. The action was referred to the undersigned Magistrate
Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 2021, Fulkerson filed the instant motion to dismiss based mainly on a lack of personal
2 jurisdiction. (ECF No. 31.) In response, Ahmad filed a motion to amend his FAC, (ECF
3 No. 39), but did not otherwise respond to the motion to dismiss.

4 **II. LEGAL STANDARD**

5 Federal courts are courts of limited jurisdiction. *Exxon Mobil Corp. v. Allapattah*
6 *Servs., Inc.*, 545 U.S. 546, 552 (2005). A court is “presumed to lack jurisdiction in a
7 particular case unless the contrary affirmatively appears.” *Stock West, Inc. v.*
8 *Confederated Tribes of Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). Lack
9 of personal jurisdiction is a waivable defect, unlike lack of subject matter
10 jurisdiction. See Fed. R. Civ. P. 12(h)(1). On a motion to dismiss for lack of personal
11 jurisdiction under Federal Rule of Civil Procedure 12(b)(2), the plaintiff bears the burden
12 of demonstrating the court’s exercise of jurisdiction is proper. See *Schwarzenegger v.*
13 *Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). When the court’s
14 determination is based on written materials rather than after an evidentiary hearing, “the
15 plaintiff need only make a *prima facie* showing of jurisdictional facts.” *Sher v. Johnson*,
16 911 F.2d 1357, 1361 (9th Cir. 1990).

17 “The Due Process Clause of the Fourteenth Amendment constrains a State’s
18 authority to bind a nonresident defendant to a judgment of its courts.” *Walden v. Fiore*,
19 571 U.S. 277 (2014). Due process requires that a defendant have minimum contacts
20 with the forum state such that the exercise of personal jurisdiction does not offend
21 traditional notions of fair play and substantial justice. *Int’l Shoe Co. v. Washington*, 326
22 U.S. 310 (1945). The primary focus of a court’s personal jurisdiction inquiry is “the
23 defendant’s relationship to the forum State.” *Bristol-Myers Squibb Co. v. Superior Court*
24 *of California*, 137 S.Ct. 1773, 1779 (2017); see also *Axiom Foods, Inc. v. Acerchem Int’l,*
25 *Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017) (stating that the court’s primary concern is “the
26 burden on the defendant”) (quoting *Bristol-Myers Squibb*, 137 S.Ct. at 1780). A plaintiff
27 must establish that the court has personal jurisdiction by either (1) general jurisdiction
28 and (2) specific jurisdiction. *Freestream Aircraft (Bermuda) Limited v. Aero Law Group*,

1 905 F.3d 597, 602 (9th Cir. 2018).

2 “General jurisdiction exists when the defendant’s contacts with the forum state are
 3 so “continuous and systematic” as to render the defendant essentially “at home” in that
 4 forum.” *Freestream Aircraft (Bermuda) Limited v. Aero Law Group*, 905 F.3d 597, 602
 5 (9th Cir. 2018) (citing *Daimler AG v. Bauman*, 571 U.S. 117 (2014)). The defendant’s
 6 “suit-related conduct must create a substantial connection with the forum State.” *Walden*,
 7 134 S.Ct. at 1121. Contacts that are “random, fortuitous, or attenuated” will not
 8 suffice. *Id.* at 1123 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)).
 9 In addition, the relationship between the defendant and the forum state “must arise out
 10 of contacts that the ‘defendant *himself*’ creates with the forum State.” *Id.* at
 11 1122 (quoting *Burger King*, 471 U.S. at 475). Additionally, the contacts must be “with the
 12 forum State itself, not the defendant’s contacts with persons who reside there.” *Id.* at
 13 1122 (citing *Int’l Shoe*, 326 U.S. at 319).

14 Specific or “case-linked” jurisdiction “depends on an ‘affiliation between the forum
 15 and the underlying controversy’ (i.e., an ‘activity or an occurrence that takes place in the
 16 forum State and is therefore subject to the State’s regulation’).” *Walden*, 134 S.Ct. at
 17 1121 n.6 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919
 18 (2011)). Courts in the Ninth Circuit apply a three-part test to determine whether a non-
 19 resident defendant is subject to specific jurisdiction:

20 (1) The non-resident defendant must purposefully direct her activities or
 21 consummate some transaction with the forum or resident thereof; or
 22 perform some act by which he purposefully avails himself of the privilege of
 23 conducting activities in the forum, thereby invoking the benefits and
 24 protections of its laws; (2) the claim must be one which arises out of or
 relates to the defendant’s forum-related activities; and (3) the exercise of
 jurisdiction must comport with fair play and substantial justice, i.e. it must
 be reasonable.

25 *Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1142 (9th Cir. 2017) (citing *Schwarzenegger*,
 26 374 F.3d at 802). Plaintiffs bear the burden of satisfying the first two prongs of the
 27 test. *Axiom Foods*, 874 F.3d at 1068–69 (quoting *Schwarzenegger*, 374 F.3d at 802). If
 28 a plaintiff meets that burden, “the burden then shifts to the defendant to present a

1 compelling case that the exercise of jurisdiction would not be reasonable.” *Id.* at
 2 1069 (quoting *Schwarzenegger*, 374 F.3d at 802).

3 **III. DISCUSSION AND ANALYSIS**

4 Fulkerson moves to dismiss the complaint under Federal Rule of Civil Procedure
 5 12(b)(2), for lack of personal jurisdiction because Fulkerson has no minimum contacts in
 6 Nevada, and the events underlying the dispute at issue all occurred in Utah. (ECF No.
 7 31.) Fulkerson further argues Ahmad’s disagreement with the decision of the Utah state
 8 court belongs in the Utah Court of Appeals—where Ahmad has already filed an appeal—
 9 not in Nevada or the federal court system. (*Id.*) In response to the motion to dismiss,
 10 Ahmad filed a motion to amend his FAC. (ECF No. 39). However, the motion to amend
 11 and the proposed second amended complaint fail to address Fulkerson’s arguments
 12 related to the lack of personal jurisdiction. In fact, the allegations set forth in Ahmad’s
 13 proposed second amended complaint reiterate that the events underlying this lawsuit
 14 took place in Utah and that Fulkerson resides in Utah. (See ECF No. 39-2.)

15 Here, there is no evidence to establish either general or specific jurisdiction exists
 16 in this case. First, there is no evidence that Fulkerson has any systematic or continuous
 17 contacts with Nevada to support general jurisdiction. In addition, there is no evidence
 18 that Fulkerson purposefully directed any activities toward Nevada, consummated some
 19 transaction in Nevada, or purposefully availed himself to Nevada in any way. Moreover,
 20 none of the claims in this lawsuit relate to any Nevada related activities that Fulkerson
 21 allegedly engaged in. Therefore, Ahmad has failed to meet his burden to make a *prima
 facie* showing that personal jurisdiction can be asserted over Fulkerson in Nevada.

23 Rather, the only connection to Nevada that Ahmad has established is that Ahmad,
 24 himself, resides in Nevada and Fulkerson contacted him in Nevada. However, this is not
 25 sufficient to establish personal jurisdiction. See *Bristol-Myers Squibb Co.*, 137 S.Ct. at
 26 1779 (The primary focus of a court’s personal jurisdiction inquiry is “the defendant’s
 27 relationship to the forum State.”). As Ahmad has not opposed the motion to dismiss and
 28 he has not alleged any facts to establish that the court has general or specific jurisdiction

1 over *defendants*, the complaint should be dismissed for lack of personal jurisdiction
2 under Federal Rule of Civil Procedure 12(b)(2).

3 Because the Court recommends that Fulkerson's motion to dismiss, (ECF No.
4 31), be granted, and Ahmad's motion to amend does not cure these jurisdictional
5 defects, the Court also recommends that Ahmad's motion to amend, (ECF No. 39), be
6 denied, and all other pending motions, (ECF Nos. 46, 48, 50, 54, 64, 66), be denied, as
7 moot.

8 **IV. CONCLUSION**

9 For good cause appearing and for the reasons stated above, the Court
10 recommends that Fulkerson's motion to dismiss, (ECF No. 31), be granted, Ahmad's
11 motion to amend, (ECF No. 39), be denied, and the miscellaneous motions, (ECF Nos.
12 46, 48, 50, 54, 64, 66), be denied, as moot.

13 The parties are advised:

14 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
15 Practice, the parties may file specific written objections to this Report and
16 Recommendation within fourteen days of receipt. These objections should be entitled
17 "Objections to Magistrate Judge's Report and Recommendation" and should be
18 accompanied by points and authorities for consideration by the District Court.

19 2. This Report and Recommendation is not an appealable order and any
20 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the
21 District Court's judgment.

22 **V. RECOMMENDATION**

23 **IT IS THEREFORE RECOMMENDED** that Fulkerson's motion to dismiss, (ECF
24 No. 31), be **GRANTED**;

25 **IT IS FURTHER RECOMMENDED** that Ahmad's motion to amend, (ECF No. 39),
26 be **DENIED**; and,

27 **IT IS FURTHER RECOMMENDED** that the motion to compel, (ECF No. 46),
28 countermotion to quash, (ECF No. 48), motion to substitute plaintiff, (ECF No. 50),

1 motion to compel, (ECF No. 54), motion to disqualify counsel, (ECF No. 64), and motion
2 to compel, (ECF No. 66), be **DENIED as moot**.

3 **DATED:** September 1, 2021.

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UNITED STATES MAGISTRATE JUDGE